

Second, in response to the previous Office Action, Applicants stated that they would rely upon their foreign priority to overcome the rejection. The Examiner responds that the Applicants cannot rely upon the foreign priority papers to overcome the rejection "because a translation of said papers has not been made of record in accordance with 37 C.F.R. § 1.55. See MPEP §201.15." The Examiner asserts that these sections of the Rules of Practice and the MPEP require that there should be a translation of the priority document and that there must be a statement that the translation of the certified copy of the priority document is accurate. The Examiner observes that the translation is not accompanied by such a statement. Specifically, the statement submitted is defective in not referring to the certified copy of the priority document.

In response to this rejection, Applicants are submitting herewith a new Declaration that meets the precise language of the U.S. Patent rules. Applicants respectfully submit that this new Declaration would overcome the Examiner's basis for rejection.

Claims 7-9 are rejected under 35 U.S.C. § 102(e) as being anticipated by Aitken et al (6,573,026 B1). This rejection is traversed for at least the following reasons.

As a preliminary matter, we note that Aitken has a U.S. filing date of July 28, 2000. The Applicants' claim to priority, as perfected by the filing of a new Declaration of the translator, will be earlier than the U.S. filing date and would serve to overcome the reference.

Applicants also note that the Aitken et al patent claims domestic priority from two provisional applications, neither of which has been made of record by the Examiner. The two applications were filed on December 17, 1999 (60/172122) and July 29, 1999 (60/146274), respectively. The Examiner cannot rely on these two provisional applications for purposes of this rejection for two reasons.

First, the Examiner has not identified these documents as a basis for rejection or even provided copies of the applications. Thus, Applicants cannot evaluate precisely those parts of the reference or references that are considered pertinent by the Examiner.

Second, on the basis of the Applicants' priority date, which is more than six months prior to the U.S. filing date of Aitken et al, any such rejection would be overcome. The Applicants' priority date of December 3, 1999 would enable Applicants to overcome at least one of the provisional applications filed on December 17, 1999. Thus, only the subject matter of

provisional application 60/146274, filed on July 29, 1999, may be prior art to the present invention under 35 U.S.C. § 102(e).

Applicants respectfully submit that the Examiner has the burden of demonstrating how the teachings in that reference apply to the presently claimed invention. Applicants respectfully request that, if the Examiner persist in a rejection based on Aitken et al, a non-final rejection is required with the submission of a copy of the provisional application No. 60-146,274, together with the citation of the appropriate disclosure in that reference, which is alleged to anticipate the claimed invention, Applicants clearly can overcome the U.S. filing date of Aitken et al as well as its priority date based upon one of the provisional applications. The burden is on the Examiner to demonstrate that the earlier provisional application alone can anticipate the claimed invention.

Finally, Applicants traverse the Examiner's rejection by asserting that even the patent issued to Aitken et al does not anticipate the present invention. The Examiner relies upon a disclosure of a pulses laser with translation device and amplifier, and asserts that the amplifier is a modulator if "modulate" means to change the amplitude as defined in the online dictionary, **yourdictionary.com**. Applicants respectfully submit that this is an absurd interpretation of the term "modulate" as an amplifier is a steady state device that does not "vary" the amplitude of a carrier wave or light wave for the translation of intelligence. The definition cited by the Examiner must be interpreted in its entirety, that is, to "vary the amplitude---for the transmission of intelligence" and not simply to change amplitude of a signal. The definition clearly requires such variation to be for transmission of intelligence, which is the common understanding of "modulation". Thus, the amplifier is not a modular, as proposed by the Examiner. The text in Aitken et al, particularly the paragraphs bridging cols. 1 and 2, the paragraphs bridging cols. 3 and 4 and col. 6, line 43 - col. 7, line 18 have no description related to a modulation.


Further, as described in column 3 at lines 9-26, Aitken et al relates to a method of writing a pattern in a bulk glass substrate for focusing a pulsed laser beams within the substrate to induce an increase in the refractive index of the material. On the other hand, the present invention relates to a plate-forming apparatus using a light source to cause photopolymerization reaction by a multiple photon absorption phenomenon. Thus, the phenomena caused by the light source are quite different from each other.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

 Res No.
32,156

 Alan J. Kasper
Registration No. 25,426

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: October 2, 2003